**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929**

**WP(C).No. 13813 of 2007(T)**

**----------**

**PETITIONER:**

**----------**

**DEVAKIAMMA @ CHINNUKUTTYAMMA,**
**W/O.LATE RAMANKUTTY,PARAKKAD TACHOTH,**
**VALLAPUZHA VILLAGE,OTTAPPALAM TALU,**
**PALAKKAD DISTRICT.**

**BY ADV. SRI.BLAZE K.JOSE**

**RESPONDENTS:**

**----------**

1. **STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT,DEPARTMENT OF REVENUE, GOVERNMENT SECRETRIAT,TRIVANDRUM.**

2. **THE ASSISTANT EXECUTIVE ENGINEER, KERALA PUBLIC WORKS DEPARTMENT,SHORNUR, PALAKKAD.**

3. **VALLAPUZHA GRAMA PANCHAYATH, REP. BY ITS SECRETARY,VALLAPPUZHA,PATTAMBI VIA,PALAKKAD DIST.**

4. **THE DISTRICT PLANNING OFFICER, PALAKKAD.**

5. **THE REGIONAL TRANSPORT AUHTHORITY, PALAKKAD REP. BY ITS SECRETARY.**

**6. K.ABDURAHIMAN, MEMBER, WAR NO.XIII,**
**VALLAPUZHA GRAMA PANCHAYATH,VALLAPUZHA,**
**PATTAMBI VIA,PALAKKAD DISTRICT.**

**R1, R2 & R4 BY GOVERNMENT PLEADER SHRI P.K. RAVISANKER.**

**R6 BY ADV. SRI.K.I.ABDUL RASHEED**

**R3 BY ADV. SRI.JACOB SEBASTIAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K. M. JOSEPH, J.**

---

**W.P.C. NO. 13813 OF 2007 T**

---

**Dated this the 24th May, 2007**

**JUDGMENT**

Prayer in the Writ Petition is to issue a mandamus commanding respondents 1 to 5 to take all steps to prevent the construction of the bus waiting shed in front of the property of the petitioner without obtaining the previous approval and sanction of respondents 4 and 5, and also to comply with Rule 5 of the Kerala Panchayat Raj (Landing Places, Halting Places, Cart Stands and Other Vehicle Stands) Rules, 1995 and Rule 344 of the Motor Vehicles Rules. Case of petitioner, in brief, is as follows:

Petitioner is a widow. She is aggrieved by the construction of a bus shelter by the sixth respondent in the property of PWD in front of her property blocking the entire road frontage without the approval or sanction from respondents 1 to 5. Ext.P1 is the tax receipt to evidence ownership of sixty cents of land. The definite case of petitioner is that the said construction is

blocking the entire road frontage of her property, and that within a distance of one Kilometre there are already three waiting sheds and one of them is very close-by. Petitioner addressed Ext.P3 before the District Collector as well as respondents 2, 3 and 4, it is stated.

2. In the Counter Affidavit filed by sixth respondent, it is, inter alia, stated as follows:

Petitioner filed the Writ Petition with misleading statements and suppressing material facts. It is stated that the Grama Sabha of Ward No.XIII held on 11.2.2006 unanimously took a resolution proposing to construct the bus waiting shed at Kallumkoodam after removing the unused waiting shed situated at Yaram centre. Ext.R6(a) is the copy of the resolution of the Grama Sabha. It is stated that on passing the resolution, as the Member of the Ward, the sixth respondent requested the local MLA to allot necessary amount from the Special Development Fund of the Member of the Legislative Assembly. It is stated further that the M.L.A. had provided funds last year for three

other sheds which have already been constructed and opened for public. The M.L.A. granted permission and the fourth respondent, District Planning Officer in turn allotted Rs.75,000/= on the basis of the administrative sanction. Ext.R6 (b) is the administrative sanction granted by fourth respondent. It is also stated that the allegation of the petitioner that there are already three bus waiting sheds within a distance of one kilometre is incorrect. It is stated that the present construction of the bus waiting shed is highly necessary, since there is not even a shade tree or other shop buildings to give shelter for the passengers. It is further stated that the Writ Petition is politically motivated. It is also stated that the petitioner has road frontage about 28 Metres whereas the waiting shed is four metres and the shed is constructed without affecting entry to the property of the petitioner.

3. A Reply Affidavit has been filed by the petitioner stating that as per Rule 206 of the Kerala Motor Vehicles Rules, it is the State or the RTA to fix such places for stage carriages ,

that the sixth respondent or the Grama Sabha has no such power and that the Grama Sabha alone cannot fix such stopping places, and the shifting of the bus stop is malafide. It is also stated that the conditions in Ext.R6(b) are not complied with. It is submitted that free surrender of the land referred to in Ext.R6(b) is not done. The third respondent Panchayat also has filed a Counter Affidavit. It is stated that the proposed construction is in the property belonging to the PWD and there is no approved bus stop. It is also stated that since the construction is to be carried out, using M.L.A. Funds, the third respondent Panchayat does not have much control over the allocation of funds. It is lastly stated that the opinion of the Panchayat is that the MLA fund can be used for better purposes, like supply of drinking water, etc.

4. It is clear that the construction in question is being carried out on the basis of Ext.R6(b). There is no challenge to the same by the petitioner. The District Collector was satisfied that administrative sanction could be accorded for

implementation of the work in question utilising MLA funds. I cannot accept the plea of the Panchayat that it could be used for better purposes. There is no challenge to Ext.R6(b). I further note that the claim made by petitioner is that the construction is blocking the entire road frontage of the petitioner's property. The unrebutted allegation in the Counter Affidavit of the sixth respondent is that the petitioner has a road frontage of twentyeight metres and the construction in question is only four metres. Therefore, it does not appear that the prejudice that the petitioner sought to project in the Writ Petition, is based on facts. Learned counsel appearing on behalf of the Panchayat also, on being asked whether permission under Rule 5 of the Rules is necessary, would take the stand that it may not be necessary. He would also submit that it may not be necessary that a resolution should be passed by the Panchayat for putting up the construction in question. The further illegality pointed out by the petitioner is Rules 344 and 206 of the Kerala Motor Vehicles Rules. In this case, it is significant to note that the

petitioner has not approached the Regional Transport Authority as such. He has moved the District Collector. Of course, the construction is admittedly purported to be made on PWD land. Having regard to the totality of the facts in this case, I feel that I need not consider this matter, particularly having regard to one fact which is that, as the pleadings stand, petitioner's road frontage extends to 28 metres, while the construction in question will occupy only four metres on the southern side. Of course, construction can be continued only if there is permission from the PWD. Petitioner has apparently not approached the fifth respondent who is the RTA. In such circumstances, except from making the observation that the sixth respondent cannot make the construction on PWD land without obtaining permission from the PWD, I am declining jurisdiction under Article 226. But, I make it clear that it is open to the petitioner to approach the fifth respondent, if she is so advised.

Kbk. **K. M. JOSEPH, JUDGE**